



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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OFFICE OF
ECOSYSTEMS, TRIBAL AND
PUBLIC AFFAIRS

October 22, 2012

Richard Newton, District Ranger
Emmett Ranger District
1805 Highway 16 #5
Emmett, Idaho 83617

Re: U.S. Environmental Protection Agency (EPA) comments on the Supplemental Draft
Environmental Impact Statement (SDEIS) for the Scriver Creek Integrated Restoration Project
(EPA Project Number: 07-001-AFS).

Dear Mr. Newton:

This review was conducted in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309 specifically directs the EPA to review and comment in writing on the environmental impacts associated with all major federal actions. Under our section 309 authority, our review of the SDEIS considers the expected environmental impacts, and the adequacy of the EIS in meeting procedural and public disclosure requirements of NEPA.

The SDEIS analyzes the potential environmental impacts of the No Action Alternative (Alternative A), the Proposed Action (Alternative B), and two additional action alternatives (Alternatives C and D), for the Scriver Integrated Restoration Project (Project). The need identified for an SDEIS is based on 1) the inclusion of two new action alternatives; 2) updated information about road systems, logging systems, and watershed restoration opportunities; and 3) a desire to clearly identify all permits (including National Pollutant Discharge Elimination System or NPDES permits), licenses, and other entitlements that were not otherwise identified in the DEIS that may be needed to implement the proposed activities.

In our comments on the 2011 DEIS, the EPA indicated support for the road decommissioning and realignment activities proposed under the Proposed Action (Alternative B). Our review found these activities to support implementation of the total maximum daily load (TMDL) for the Middle Fork of the Payette River. The new Alternative C identifies additional watershed restoration opportunities and we are pleased to see Alternative C identified as the preferred alternative. The Scriver Creek watershed is a major sediment source and the additional road decommissioning, road stabilization and culvert replacement activities proposed under Alternative C will further the implementation of the Middle Fork Payette TMDL. We also appreciate the responsiveness of the Forest Service to public comment in the development of Alternative D. We do not, however, believe that the diameter limits proposed under Alternative D are fully consistent with the objectives of the 2010 Wildlife Conservation Strategy. We encourage the Forest to select Alternative C in the FEIS and ROD.

On page 1-14, the SDEIS indicates that it is uncertain whether this project will require a NPDES permit, and requests comments and/or clarification from the EPA and the Idaho Department of Environmental

Quality. The EPA finds the SDEIS to be accurate in its characterization of the current permitting situation. We offer the following updates for your consideration as you move forward with the Final Supplemental EIS:

- The Supreme Court is scheduled to review the U.S. Court of Appeals for the Ninth Circuit Court's ruling in NEDC v. Brown on December 3, 2012.
- As noted in the SDEIS, the EPA issued a formal notice on May 23, 2012, in the Federal Register (77 FR 30473) indicating our intent to expeditiously propose revisions to our Phase I stormwater regulations (40 C.F.R. §122.26) to specify that stormwater discharges from logging roads are not stormwater discharges "associated with industrial activity." The Brief prepared for the Supreme Court by the Department of Justice¹ also makes this assertion.
- The EPA will continue to study alternative approaches for addressing stormwater discharges from forest roads.

Overall, we believe the "wait and see" approach proposed by the Forest Service is appropriate given the current uncertainty.

Based on our review we have assigned the SDEIS a rating of LO (Lack of Objections). A copy of the EPA rating system is also enclosed. We appreciate this opportunity to comment at this stage of the analysis process. If you have any questions or concerns please contact me at (206) 553-1601 or by electronic mail at reichgott.christine@epa.gov, or you may contact Teresa Kubo of my staff at (503) 326-2859 or by electronic mail at kubo.teresa@epa.gov.

Sincerely,



Christine B. Reichgott, Manager
Environmental Review and Sediment Management Unit

Enclosures:

EPA Rating System for Draft Environmental Impact Statements

¹ <http://www.justice.gov/osg/briefs/2012/3mer/1ami/2011-0338.mer.ami.pdf>

**U.S. Environmental Protection Agency Rating System for
Draft Environmental Impact Statements
Definitions and Follow-Up Action***

Environmental Impact of the Action

LO – Lack of Objections

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO – Environmental Objections

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 – Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 – Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.